

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

RECEIVED

FEB 10 1999

U.S. DEPARTMENT OF COMMERCE  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

Amendment of Sections  
74.1231, 74.1232, 74.1233 and 74.1284  
of the Commission's Rules

RM-9419

To: The Commission

**COMMENTS OF JACOR COMMUNICATIONS, INC.**

Jacor Communications, Inc. ("Jacor"), pursuant to Section 1.405 of the Commission's Rules, hereby submits these Comments in response to the Petition for Rule Making (the "Petition") of The American Community AM Broadcasters Association ("ACAMBA"). 1/ In the Petition, ACAMBA proposes that the Commission eliminate its established prohibition against AM radio stations using FM translator stations (and increasingly scarce FM frequencies) to rebroadcast their signals (the "Proposal"). Because the Proposal is contrary to the public interest and to long-standing principles of the Commission, the Petition should be summarily denied.

No. of Copies rec'd 014  
List ABCDE

---

1/ See Public Notice, DA 98-2527 (released Dec. 10, 1998).

The Proposal would undermine three fundamental Commission policies:

- it would hinder efforts to reduce interference in the AM band;
- it would increase interference in the FM band; and
- it would sacrifice additional Commission resources to license and police new FM translators.

Moreover, the Proposal will delay, impede or prevent the proposed transition of radio to digital broadcasting by further encumbering both the AM and FM bands and by further increasing the likelihood of interference during any transition to digital operation. As any benefits resulting from the Proposal would be limited to a small group of AM broadcasters, the Commission should not neglect its own settled principles, the interests of all other AM and FM broadcast licensees, and the broader interests of the listening public so that these relatively few licensees may profit. Accordingly, the Commission should dismiss or deny the Petition.

**I. THE PROPOSAL WOULD ENCOURAGE CONTINUED CONGESTION IN THE AM BAND AND WOULD RESULT IN FURTHER DETERIORATION OF THE FM BAND.**

Since 1987, the Commission has worked to rescue the AM broadcast service from excessive and inefficient use. 2/ In the *AM Interference Reduction Order*, the Commission acted “to reduce the level of interference in the existing AM

---

2/ See *Report & Order, Review of Technical Assignment Criteria for the AM Broadcast Service*, MM Docket No. 87-267, 6 FCC Rcd 6273 (1991) (the “*AM Interference Reduction Order*”), *aff’d on reconsideration*, 8 FCC Rcd 3250 (1993) (“*AM Interference Reduction Reconsideration*”).

band, and to consolidate existing broadcasting facilities in order to further reduce congestion and interference in the existing band.” 3/ Notably, that proceeding expressly invited AM licensees to surrender their licenses or to modify their operations in order to reduce interference in the AM band, as well as altering technical standards for AM operations, continuing the prohibition on new daytime-only AM stations, and proposing the migration of certain AM stations to new spectrum. Also in that proceeding, the Commission expressly rejected a number of comments that would have afforded preferential treatment to AM stations with no or limited nighttime service over other AM licensees because such treatment “would stray” from the Commission’s established objective to reduce “congestion and interference in the AM band.” 4/

Congestion in the AM band has not improved substantially since the conclusion of the *AM Interference Reduction* proceeding. 5/ Accordingly, the Commission has continued to endorse consolidation and interference reduction in the AM band. Likewise, the Commission has refused even to consider rule changes that might increase use of the AM band. *See id.*

In contrast, the Proposal would encourage the continued overuse of the AM band. The Proposal will give false encouragement to AM licensees that have

---

3/ *AM Interference Reduction Reconsideration* at ¶ 1.

4/ *See, e.g., AM Interference Reduction Order*, 6 FCC Rcd at 6308-09 (refusing to give daytime-only stations priority for migration to the expanded band).

5/ *See, e.g., Notice of Proposed Rule Making, Creation of a Low Power Radio Service*, MM Docket No. 99-25, at ¶ 17 (released Feb. 3, 1999).

blamed the technical limitations imposed by their licenses for their inability to prosper. <sup>6/</sup> Each of these licensees presumably understood the capabilities of their stations when they acquired or constructed them. Each of these licensees presumably projected that their stations would be economically viable without additional broadcast operations. Now, these licensees claim that that they need to duplicate their station's programming on an FM frequency in order to survive.

The Proposal will not save such licensees. A new ability to occupy an additional scarce frequency with their station's broadcast for several nighttime hours is no substitute for an effective sales effort or compelling programming. A licensee that cannot prosper under the license that it once deemed economically sufficient should not be expected to survive even should it occupy an additional frequency. With regard to such licensees, all that the Proposal will accomplish is to forestall much-needed reduction of congestion in the AM band.

Worse, the Proposal will contribute to a further deterioration of the FM band. The Proposal would foster a rush of new FM translator applications by AM broadcast licensees. Each of these new translators, once operational, would contribute to FM congestion. This increased level of congestion is certain to result in additional real-world interference to full-power FM licensees. That any new

---

<sup>6/</sup> In fact, as all licensees are limited by the terms of their licenses, the Proposal arbitrarily would limit the use of FM translators only to particular AM stations. The Commission should not consider a Petition that capriciously favors certain AM stations over others, when all such stations are similarly limited by interference in the band and their own license terms. In addition to being unfair, such preferential treatment would contradict the Commission's refusal in the *AM Interference Reduction* proceeding to favor lower-power AM stations over other AM facilities.

translators authorized under the Proposal -- like all translators -- would be secondary to full-power stations and thus responsible for eliminating all interference to all full-power stations does not mean that increased interference would not result. Even under existing Commission's Rules, which wisely limit the use of spectrum-inefficient FM translators, full power stations have to expend considerable time and resources to investigate and resolve translator-related interference. Instances of translator-caused interference have been known to degrade the signal of full-power stations for several months or longer, despite the secondary status of translators. Under the Proposal, where FM translators would be operated by small AM licensees (which likely would be less familiar with resolving FM interference than existing FM translator operators), such interference is unlikely to be eliminated any more promptly.

The experience of the Commission with the AM band also is instructive. In the *AM Interference Reduction* proceeding, the Commission reiterated that stations with limited (Class II-S and Class III-S) nighttime operations are effectively secondary at night, as they "receive no protection from interference" and are "required to provide protection to unlimited-time stations." <sup>7/</sup> Yet, as the Commission is aware, it is generally acknowledged that the proliferation of such "limited" nighttime AM stations have contributed to the continued congestion and overall deterioration of the AM band. In other words, the nominal

---

<sup>7/</sup> *AM Interference Reduction Order*, 6 FCC Rcd at 6300.

classification of a broadcast facility as secondary does not ensure that it will operate in a manner that will not adversely affect protected stations.

In fact, any such interference resulting from a new FM translator under the Proposal is only likely to be more prolonged. Simply stated, more translators mean more translator interference complaints, and more interference complaints mean more time before the Commission can muster the necessary staff to investigate, consider and resolve any particular case. 8/ Alternatively, the Commission could devote more of its limited resources to the processing of new translator applications and the policing of these new translators. However, as the Proposal envisions FM translators that, at least ostensibly, will operate only for a limited time and would intend to reach only limited areas, it hardly would be in the public interest for the Commission to choose to devote a larger share of its limited resources to translators that benefit relatively few licensees and listeners.

These substantial drawbacks to the the Proposal clearly outweigh any benefit that reasonably could be attributed to it. At most, the Proposal would enable certain AM stations to substitute one substandard set of transmission facilities (a secondary FM translator) for another substandard set of facilities

---

8/ Of course, the opportunities for interference from such new translators, in practice, likely will extend beyond their nominal operating hours. The Commission no doubt recognizes that a licensee that just had invested significant monies into a new translator might be tempted to neglect the terms of its new translator's license in order to operate the translator during additional hours, including the drive-time hours that would be just outside the operational hours of such facilities from spring to autumn each year. The Commission must consider the harm such unlicensed operations will do to the FM (and, indirectly, the AM) band.

(limited nighttime AM operations). As such, there is no guarantee that an FM translator option for these lower power AM licensees would not harm more listeners and licensees than it would help. That the Proposal could do more actual harm than good only confirms that the Proposal is not worth the additional resources that the Commission would have to spend in order to implement it safely and effectively.

**II. IN ADDITION TO JEOPARDIZING EXISTING LICENSEES, THE PROPOSAL RISKS THE DIGITAL FUTURE OF RADIO.**

The Commission is in the process of considering rules that would govern radio's transition to digital broadcasts. <sup>9/</sup> Radio requires the opportunity to broadcast digitally if it is to continue to compete against the increasingly digital content of other media. However, though the advent of digital radio appears imminent, it is not yet clear what will be required to enable radio to shift smoothly to digital transmissions.

In light of the importance and unsettled nature of digital radio, the Commission should not act prematurely on other proposals that might delay or preclude the implementation of such digital broadcasts. In particular, the Commission should not adopt proposals that would further encumber radio frequencies with additional signals until it is confident that such additional signals would not impede or affect new digital transmissions. Such a principle would be consistent with the Commission's rationale in other, similar proceedings, including

---

<sup>9/</sup> See, e.g., Petition for Rule Making, *Amendment of Part 73 of the Commission's Rules to Permit the Introduction of Digital AM and FM Broadcasting*, RM-9395 (filed Oct. 7, 1998).

the lengthy digital television proceeding and the FM Translator proceeding. 10/ Because the details of the digital radio standard have not yet been determined, the Commission should refuse to take action on the Petition at least until digital radio has been tested and implemented.

That the currently most promising form of digital radio -- the proposed in-band, on-channel ("IBOC") system -- appears highly susceptible to adjacent channel interference confirms that the Commission must act cautiously with respect to any proposal that would introduce new burdens on the radio frequency bands. If the Commission does not work to limit potential causes of interference during the transition to digital radio, digital radio is far more likely to suffer delays in implementation and the loss of needed listeners. Because additional FM translators are likely to result in additional interference to digital radio transmissions, the Proposal should not be implemented prior to digital radio, especially as only the latter would benefit the entire radio industry. 11/

---

10/ See, e.g., *Fourth Further NPRM, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 10 FCC Rcd 10541(1995) (closing class of DTV eligibles to existing licensees); *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 6 FCC Rcd. 2334 (1991) (discussing application freeze). In each of these proceedings, the Commission refused to accept or process applications or otherwise did not take action on matters related to only a subset of broadcast licensees or potential licensees when those matters might adversely affect the more general proceeding until the more general proceeding had been completed. A similar standard should govern the Commission's consideration of rules for the transition to digital radio broadcasting.

11/ Notably, any analog FM translators built just prior to a transition to digital would have to be re-built with an expensive digital transmitter. As such, it likely would be a long-term benefit for even small AM operators for the Proposal to be dismissed until more is known about radio's imminent transition to digital.



### III. CONCLUSION

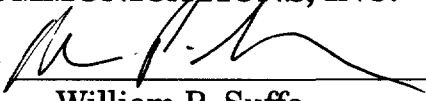
The Commission has no obligation to expand the actual nighttime service areas of a small class of AM broadcast licensees through the authorization of additional FM translators. These licensees knew the capabilities of their stations when they acquired or constructed them. They should not expect the Commission now to contribute additional spectrum for their particular use, especially in the wake of the *AM Interference Reduction* proceeding, in which the Commission established that it would not favor AM stations with limited or no nighttime operations when such preferential treatment might risk increased congestion or interference in the radio bands as a whole.

Rather, as the *AM Interference Reduction* proceeding made clear, the Commission has an obligation not to increase the risk of interference to the established operations of full-power stations by authorizing small AM stations to duplicate their programming on FM translators. More generally, the Commission should not put the interest of a relatively few AM broadcast licensees above that of most broadcast listeners and licensees, especially when to do so would be to undermine established Commission's policies that intend to limit the use of inherently inefficient FM translators and to reduce congestion in the AM band. Moreover, the Commission should not encourage the construction of new FM translators before it has determined how such additional translators might harm, impede or otherwise affect radio's imminent transition to digital broadcasts.

For the foregoing reasons, the Commission should dismiss or deny the  
Petition.

Respectfully submitted,

**JACOR  
COMMUNICATIONS, INC.**

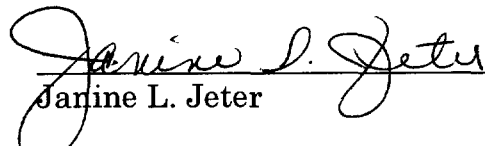
By   
William P. Suffa  
Vice President

February 10, 1999

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments were mailed,  
postage prepaid, this 10th day of February, 1999 to:

Bryan Smeathers, President  
American Community AM Broadcasters Association  
One WMTA Drive  
P.O. Box 973  
Central City, KY 42330

  
Janine L. Jeter